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## A HAWAIIAN SHIP

Supreme Court Sustains Circuit Judge's Opinion.

## CHINA TO RECEIVE A REGISTER

Col. Macfarlane is a Hawaiian Citizen.

He is Also Owner of Vessel—Bill of Sale Tax Reduced to One Dollar.

The steamship China is a Hawaiian vessel in fact, and when she arrives in port on Friday her permanent register will be given her. In the decision handed down by the Supreme Court yesterday the decision of Judge Perry was fully sustained, and the appeal dismissed. The decision permanently settles the question of registry of vessels by nominal ownership as far as the present statutes are concerned. The citizenship of a Hawaiian-born child of a foreigner is also disposed of when the decision declares that the child of foreign parents comes within the jurisdiction of the local courts, if born in Hawaii.

The stamp duty on the title of the China is fixed in a second decision at \$1, instead of \$2,000. The tax is in conformity to the statute on the subject.

The decision of Circuit Judge Perry is subjoined to the decision of the Supreme Court and its statement of the pleadings and of the facts found from the evidence. In the decision three questions raised by the appeal are discussed. (1) Is the petitioner for the writ a Hawaiian subject and as such entitled to have the steamship China registered in his name as a Hawaiian vessel? (2) Is he within the statute wholly the owner of the steamship China? (3) Can the Court go behind the discretion of the Collector-General (if any he has) in his statement that he declines to admit the steamship China to registry because he is not satisfied that no legal impediment exists to her registry?

The decision states that on the first question the Court has no doubt. Article 17 of the Constitution is then quoted to define Hawaiian citizenship. The decision further says that whatever may be the view of the British authorities as to Mr. Macfarlane's status, it does not control the Supreme Court of Hawaii, and the question must be decided according to the law, even though it involves a dual allegiance.

In the United States an almost unbroken chain of decisions from the time of the final adoption of the amendment to the Constitution in 1868, to the present time, interprets the language that would establish Mr. Macfarlane's status to be that of a Hawaiian subject.

The decision then quotes from cases in the United States Courts, which hold that persons born in the United States, who are domiciled there, and consequently subject to its jurisdiction, are citizens of the United States and of the State where they reside. It is the view of the Court that children born in the United States of alien parents are subject to the jurisdiction of the United States and are citizens thereof.

On the question of the whole ownership of the China the Court states that there is some difficulty. The name of Mr. Macfarlane alone appears on the bill of sale, and he has by this document the entire legal title to the vessel. Even though she is in possession of the Pacific Mail Steamship Company, if she should be chartered or sold, the instruments would have to be executed by the owner, Mr. Macfarlane. The opinion of Chancellor Kent is that a bill of sale is the true and proper instrument of title to a ship, and one which the maritime courts of all nations will look for, and in their ordinary practice require.

In this case the Court holds that there are no "part owners." Mr. Macfarlane's bill of sale passed the entirety, 64 shares, of the vessel to him. The Court of Queen's Bench held that a British corporation may be registered as the owner of a British-built vessel, notwithstanding some foreigners may individually have shares in the company.

The decision states that the statutes of the United States respecting regis-

try of vessels differ widely from the Hawaiian statutes. The United States have not only to protect the commerce of its citizens, but its shipbuilding interests, and so they are exceedingly strict. No provision exists in the Hawaiian statute requiring a denial that any foreigner is directly or indirectly interested in the ship. "The view that a register may be given in the name of a Hawaiian holder of the legal title without inquiry if the beneficial interest in the ship is held by foreigners has always obtained in this country, and has never been disputed until this case. Numbers of foreign vessels have obtained Hawaiian registers upon a transfer of the legal title to a Hawaiian citizen, and we give great weight in a doubtful case to the contemporaneous and unvarying construction put upon this statute by all persons dealing under it."

On the last question raised by the appeal the decision holds that the plain answer to the argument in the return to the writ, that the Collector-General had not satisfied himself that there were no legal impediments to the registry, and that the action of the Collector-General was discretionary and could not be compelled by the Court, was that the respondent had not in his return contented himself with that position, but alleged two grounds, non-citizenship of the petitioner and non-whole-ownership of the vessel, inferring from these allegations that they are the only impediments, and having held against the respondent on the points, the Court considers it unnecessary to go into the law governing the action of the courts.

The decision concludes: "It may be said that to order the register in question to issue would defeat the object of the statute in restricting the privilege of registry to vessels wholly owned by Hawaiian subjects. What is the object of the statute? Not to protect the shipbuilding industry. We have practically none. The object, so far as we can ascertain it, is to assert our flag in foreign seas—a sentimental one—and the practical one, of securing taxes upon the value of these vessels, which is secured by their being owned by Hawaiian subjects."

The decision of the Circuit Court is sustained and the appeal dismissed. The decision of the Circuit Court ordered the writ of mandamus to issue to compel the Collector-General to issue a register.

## Stamp Duty One Dollar.

The Supreme Court also decided that the assessment of the stamp duty by the Minister of Finance of \$2,000, on the valuation of \$400,000, should be \$1 on the valuation of five shillings. The statute provide that the duty upon a bill of sale of a ship shall be the same as on a conveyance, and that the duty upon a bill of conveyance shall be \$1 when the purchase or consideration money therein expressed shall not exceed \$500. The decision holds that the duty is assessable, only upon the actual consideration and then only upon such considerations as are mentioned in the statute. The only consideration mentioned in the statutes as affecting the stamp duty upon a bill of sale of a ship under the circumstances of the present case is "the purchase or consideration money therein mentioned and the stamp duty assessable upon the only consideration mentioned in the bill of sale in question is one dollar. The appeal is sustained and the stamp duty adjudged to be one dollar.

## HOTEL TALK.

Mr. Macfarlane May Not Bid at Sale.

"There's nothing new regarding the hotel," said E. C. Macfarlane yesterday, "and I doubt if there will be for several weeks. So far as I am concerned I can say that I have no idea of bidding on the property at the sale on Friday. The price is too high and it would require too much money to put it in shape to make the place right."

"If arrangements could be made with the other owners on the lot there might be something in it, but they show no disposition to do anything. Only one of those with whom I have talked has shown a willingness to make any kind of an offer. I do not want to go into the scheme and be tied up by the owners of the surrounding property. I am informed that a local man has made an offer of the upset price of the lease for ten years but nothing has been done about it nor will any action be taken until the Cabinet disposes of the proposition to make a public school building out of it. That we want a first class hotel here, there is no doubt, but the terms of lease or purchase of the Hawaiian Hotel should be such as would warrant a reasonable expenditure of money."

Mr. Macfarlane has been so long identified with the hotel in Honolulu that it really seems strange to have him drop out of it even if it is but temporary. And those who know Mr. Macfarlane best are inclined to the notion that he is holding something up his sleeve.

A Chinese paper estimates that the victims of the plague in Foochow this year will not fall far short of 40,000.

## SPAIN IS WARNED

United States Will Interfere Unless War Ceases.

## SO SAYS AMERICAN MINISTER

Spain Already Looking For Trouble.

Populace in Madrid Seeking Excuses for Insulting the American Flag.

PARIS, September 20.—A dispatch from San Sebastian to the Temps of this city says that in his interview yesterday with the Duke of Tetuan, the Spanish Minister for Foreign Affairs, the United States Minister to Spain, General Stewart L. Woodford, did not present any claim for indemnity, but confined the interview to a moderate phase in the statement of the great injuries commerce and industry had suffered in the United States through the prolongation of the Cuban war.

General Woodford is said to have advised that Secretary Sherman had desired him to declare to the Spanish Government that it was evidently impossible for Spain to end the rebellion in a reasonable time, and further, that if the war was continued Cuba would be devastated and of no utility to Spain or to the Cubans. In conclusion the United States Minister is reported to have insisted courteously but firmly upon the necessity of terminating the war, declaring that if it was not terminated by the end of October the United States would feel justified in taking measures to secure the independence of Cuba.

The Duke of Tetuan, according to the dispatch to the Temps, while protesting against alleged American "pretensions," said he would reply officially to the United States Minister when the Spanish court returns to Madrid.

**SPAIN IS TOUCHY.**  
Prospects of War With United States Rouse Bitter Feelings.

LONDON, September 19.—There is no use denying that the situation in Spain is rapidly going from bad to worse. It is perhaps because it is getting so desperate that antagonism to the United States is growing stronger, and is to some extent encouraged by the attitude of the Government. Unfavorable construction is put upon the most trifling acts of General Woodford. There is even unfavorable comment upon the fact that he has decided to live at a hotel for four months, on the pretext that he requires time to select a house to suit his family. This is interpreted to mean that he knows his instructions are likely to lead to a rupture, and he wants to be able to depart without difficulty.

Public insults to America are becoming very common. The Imparcial, the principal journal of Madrid, printed a leader Thursday in the form of an apocryphal letter from the Sultan of Morocco to President McKinley, begging him to communicate the secret of how he manages to escape the consequences of American outrages on Spain in Cuba, while he, the Sultan, is frequently compelled to pay for outrages by the Riff pirates.

## TO ABANDON PROVINCES.

Weyler Finds He Cannot Control Interior.

NEW YORK, September 17.—The Sun's Havana cable says: The beginning of the end of the Cuban war is undoubtedly the decision forced upon General Weyler by the extraordinary activity of the insurgent army in six provinces of the island to abandon the inland provinces of Puerto Principe and Santiago de Cuba to the revolutionists and concentrate the Spanish forces at the seaports, where they can be supported by the Spanish navy. The important military station of Puenio, in Santiago de Cuba province, has been abandoned by the Spanish troops. The Spanish residents of Ji-

guani, Bayamo and Holguin, in the same province, are greatly alarmed by the prospect of being left to the mercy of the insurgents. In spite of orders he has received from Madrid not to abandon Bayamo the Captain-General has replied to the Spanish merchants of that town that the most he can promise them is to do his best without guaranteeing anything.

## GOMEZ IS ELECTED.

Weyler Cables Same Old Story of Ending Cuban Rebellion.

NEW YORK, September 18.—The Herald's correspondent at Havana cables: News of the election of Dr. Domingo Mendez Capoe as Cuba's new President is confirmed. I have it also on good authority that Bartolome Maso was re-elected president of the Congress, General Maximo Gomez has been made Minister of War and General Calixto Garcia was appointed Commander-in-Chief.

Captain-General Weyler cables to the Government saying that he is perfectly confident of being able to pacify Cuba in four months.

## PEARY HAS RETURNED.

Comes Back From North Greenland for the Winter.

SYDNEY, Cape Breton, September 20.—The steam sealing bark Hope, with Peary and party on board, returning from North Greenland, arrived here this afternoon. All on board are well. The Hope came into port burning her last ton of coal and with her bulwarks and decks giving evidence of the furious seas of unusually stormy weather. She is nearly as deep in the water as when she left here in the latter part of July with her bunkers full of coal, for the huge Cape York meteorite, the largest in the world, is in her hold, bedded in tons of ballast.

Lieutenant Peary has on board, also, six Cape York Eskimaux, who will go with him when he returns next year to attempt to reach the North Pole. The Eskimaux have their tent, dogs, sledges and canoes. They are eager for the undertaking and all arrangements have been made.

## WAR IS OVER.

Pearce Declared and Signed by Turkey and Greece.

CONSTANTINOPLE, September 20.—It was officially announced today that peace between Greece and Turkey has been signed, and the Ministers of War and Marine have so notified all the Turkish military and naval commanders.

Most of the European sovereigns have congratulated the Sultan upon the conclusion of peace.

## WAR CLOUD DARKENS.

Mobilization of British Forces on Indian Frontier.

LONDON, September 18.—The fact that no less than ten batteries of horse and field artillery have been ordered to embark for India during the months of September and October is much commented upon in military circles. Under ordinary circumstances, the four batteries now in India would have been relieved this month. But these batteries have been ordered to remain in India, and therefore there will shortly be on the frontier fourteen batteries of artillery, a full complement for an army corps.

As the British force now assembled on the frontier is of ample strength to wipe out all visible resistance, the only conclusion that can be reached in relation to the dispatch of reinforcements for the artillery are that the authorities are possessed of information of a serious character. The information conveyed by the War Office Monday last to the London commercial agent of the Ameer of Afghanistan that no war material or machinery for the manufacture thereof would be allowed to cross the frontier during the present crisis, indicates that the British Government has by no means entire confidence in the Ameer's fidelity, and it is hinted that the Government

Royal makes the food pure, wholesome and delicious.



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